IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.954 OF 2001

WITH

APPEAL FROM ORDER NO.957 OF 2001

Rashmi Grah Nirman Pvt.Ltd.
through its director
Shri Hemant Bhogilal Kothari
124, Mittal Towers,"C" wing,
12th floor, Nariman Point,
Bombay. ... Appellant.

V/s.

Unique Shanti Developers
through its proprietor
Harshad P. Doshi,
Shanti Park, Opp.Sec.6,
Mira Road, Dist.Thane. ... Respondent

....

Mr.Y.S.Jahagirdar with G.S.Godbole for the Appellant.

Mr. Vineet B. Naik i/b M/s Desai & Diwanji, advocate for Respondent.

Coram: Smt.Nishita Mhatre, J.
Dated: 20th October, 2004.

ORAL JUDGMENT:

1. These two A.Os are being considered together as the facts involved in both the A.Os are similar and the parties to the A.Os are the same. According to the appellant, the agreement for development was executed between themselves and respondent on 10.10.1994 whereby the Respondent granted development rights for an area of 32,275 square feet built up area. On 12/10/1994 the appellant and respondent entered into another agreement

in respect of a built up area admeasuring 64,550 square feet. The commencement certificate was issued and received by the appellant in the year 1999. Thereafter, the appellant began construction on the suit property. It appears that it was agreed between the parties that a certain number of flats would be surrendered to the Competent Authority under the Land Acquisition (Ceiling & Registration) Act, 1976. It appears that on 14/11/2000, respondent filed Civil Suit No.362 of 2000 in the Civil Court at Thane for a declaration and injunction against the appellant. The respondent sought the relief of possession in respect of six flats and shops in building Nos. 5 and 6 in Survey No.221. According to the appellant, permanent injunction was sought against the appellant from dispossessing the respondent from 12 flats and shops in building Nos. 5 to 10 in Survey Nos. 221 and 222. By an order dated 15th November, 2000, an exparte ad-interim order was passed below Exh.5 in Special Civil Suit No.362 of 200 by the Learned Joint Civil Judge, Sr. Division, Thane. On 16/11/2000, the Trial Court was pleased to pass an ad-interim order directing the appellant to maintain status quo. Thereafter, the Trial Court allowed the application filed by the respondent at Exhibit 16 seeking an interlocutory mandatory injunction seeking restoration and possession of 12 flats in Building Nos.7 to 10. Both these orders were challenged in the A.O.No.954 of 2001 and A.O. No.957 of 2001. A.O.No.954

of 2001 challenges the order passed on Exh.5 and A.O.No.957 of 2001 challenges the order passed on Exh.16.

2. Both the parties agree that the Order dated November 1,2001 passed by this court while admitting A.O. No.954 of 2001 may be continued during the pendency of the suit. In fact, the order would cover the controversy in A.O.No.957/2001. Accordingly both A.Os are disposed of by directing the parties to maintain status quo with regard to the suit flats till the disposal of the suit. The trial court will decide the suit uninfluenced by the observations made by it in the order passed on Exh.5 as well Exh.16, as these observations and findings are obviously prima facie.

3. The suit is expedited. The Trial Court is requested to hear and dispose of suit as expeditiously as possible, in any event by 31st July, 2005. I am informed that certain other applications filed under Order 39 Rule 2(A) are pending before the Trial Court. These applications can be heard and decided effectively alongwith the final hearing of the suit.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1174 OF 2001

IN

APPEAL FROM ORDER NO.954 OF 2001

Rashmi Grah Nirman Pvt.Ltd.
through its director
Shri Hemant Bhogilal Kothari
124, Mittal Towers,"C" wing,
12th floor, Nariman Point,
Bombay. ... Appellant.

V/s.

Unique Shanti Developers
through its proprietor
Harshad P. Doshi,
Shanti Park, Opp.Sec.6,
Mira Road, Dist.Thane. ... Respondent

....

Mr.Y.S.Jahagirdar with G.S.Godbole for the Applicant.

Mr. Vineet B. Naik i/b M/s Desai & Diwanji, advocate for Respondent.

Coram: Smt.Nishita Mhatre, J.

Dated: 20th October, 2004.

P.C.:

. In view of the disposal of the A.O., Civil Application does not survive. Hence dismissed as such.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1181 OF 2001

IN

APPEAL FROM ORDER NO.957 OF 2001

Rashmi Grah Nirman Pvt.Ltd.
through its director
Shri Hemant Bhogilal Kothari
124, Mittal Towers,"C" wing,
12th floor, Nariman Point,
Bombay. ... Appellant.

V/s.

Unique Shanti Developers
through its proprietor
Harshad P. Doshi,
Shanti Park, Opp.Sec.6,
Mira Road, Dist.Thane. ... Respondent

....

Mr.Y.S.Jahagirdar with G.S.Godbole for the Applicant.

Mr. Vineet B. Naik i/b M/s Desai & Diwanji, advocate for Respondent.

Coram: Smt.Nishita Mhatre, J.

Dated: 20th October, 2004.

P.C.:

. In view of the disposal of the A.O., Civil

Application does not survive. Hence dismissed as such.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
APPEAL FROM ORDER NO.954 OF 2001
WITH
APPEAL FROM ORDER NO.957 OF 2001

Date of Decision : October 20, 2004

For Approval and Signature

The Hon'ble Smt. Justice NISHITA MHATRE

1. Whether Reporters of Local Papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur, Aurangabad & Goa offices?